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In re Application of
Brian Fristensky
Application No.: 09/743,110
PCT No.: PCT/CA99/00608
Int. Filing Date: 02 July 1999
Priority Date: 03 July 1998
Attorney's Docket No.: 82402-3303
For: Method for Genetic Engineering of Disease
Resistance Using The DRR206 Class of Proteins

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This is in response to the "Petition To Revive Unintentionally Abandoned National Phase Application Under 37 CFR 1.137" filed on 23 April 2001.

BACKGROUND

On 02 July 1999, this international application was filed, claiming an earliest priority date of 03 July 1998.

On 02 February 2000, a Demand electing the United States was filed in this international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 03 January 2001. This international application became abandoned with respect to the United States at midnight on 03 January 2001 for failure pay the basic national fee.

On 05 January 2001, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition, and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee. No oath or declaration was submitted at that time. However, the application was abandoned since 03 January 2001 because failure to pay the basic national fee.

On 07 August 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b) must be furnished within the time period set forth. The notification set a one month time limit or 31 months from the priority date for the application, whichever is later to respond.

On 23 April 2001, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition, which was accompanied by, *inter alia*, an executed declaration.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3) and, (4) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371. The 35 USC 371 date of this application is **23 April 2001**.



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